THE

Bombay Government Gazette.

Published by Authority.

THURSDAY, 26TH FEBRUARY 1885.

☞ *Separate paging is given to this Part, in order that it may be filed as a separate compilation.*

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 20th February 1885, and was referred to a Select Committee:—

Bill No. 3 of 1885.

A Bill to amend section 265 of the Indian Contract Act, 1872.

WHEREAS it is expedient to amend section 265 of the Indian Contract Act, 1872; It is hereby enacted as follows:— IX of 1872.

New section substituted for section 265, Indian Contract Act.

1. For section 265 of the said Act the following shall be substituted, namely:—

"265. In the absence of any contract to the contrary, after the termination of a partnership, the Court may at the suit of any one of the partners or his representatives wind up the business of the firm, provide for the payment of its debts, and distribute the surplus according to the shares of the partners respectively."

Right of partners to sue for winding-up by Court after termination of partnership.

2. In section 213 of the Code of Civil Procedure the words and figures from and including the word "applications" to the end of the section are hereby repealed. XIV of 18

Repeal of part of section 213, Act XIV, 1882.

STATEMENT OF OBJECTS AND REASONS.

SECTION 265 of the Indian Contract Act provides that, in the absence of any contract to the contrary, after the termination of a partnership, each partner or his representatives may apply to the Court to wind up the business of the firm, to provide for the payment of its debts and to distribute the surplus according to the shares of the partners respectively. It is explained that the Court mentioned in the section means a Court not inferior to the Court of a District Judge within the limits of whose jurisdiction the place or principal place of business of the firm is situated. This section has been the subject of various decisions by the Calcutta and other High Courts, first as to the meaning of the words "may apply", and secondly with regard to the jurisdiction of the Courts in the case of applications under the section.

2. The use of the words "may apply" has given rise to doubts as to whether the legislature intended that proceedings under the section should be by way of miscellaneous application or by way of regular suit. It is considered that where a partner wishes to have the business of the firm wound up, the debts paid and the surplus distributed, he should proceed by instituting a regular suit. The questions which the Court has to consider in such a case cannot well be decided in a summary manner on a miscellaneous application, and in disposing of an application under section 265 the Court must in effect deal with it as if it were a suit. In using the words "may apply" the legislature intended probably to indicate merely that a partner had a right to have the business wound up, the payment of the debts provided for, and the surplus distributed, by the Court. It is unlikely that there was any intention to declare that the procedure in such a case should be by way of a miscellaneous application.

3. With regard to the question of jurisdiction, the general result of the decided cases is to confine the jurisdiction to the Court of the District Judge and thus to bring on his files a number of suits many of which are unimportant and such as could be equally well decided by the subordinate tribunals. The time of all District Judges is fully occupied by their multifarious duties, and it is very undesirable that the performance of these duties should suffer in consequence of the compulsory institution in their Courts of cases the time and labour expended over which are often entirely disproportionate to the interests at stake.

4. The present Bill has accordingly been prepared. It amends section 265 so as to show plainly that proceedings thereunder are to be by way of a regular suit, and it omits the *Explanation* to the section, thus leaving the question of jurisdiction to be decided by the ordinary rules. The Bill also repeals the last paragraph of section 213 of the Code of Civil Procedure, as the omission of the *Explanation* renders that paragraph unnecessary.

(Signed) C. P. ILBERT.

The 16th February 1885.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

[*Published with the "Bombay Government Gazette" on the 5th March 1885.*]

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